2013 IL App (2d) 130645-U
No. 2-13-0645
Order filed November 12, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re J.G., a Minor	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
	)	No. 11-JA-183
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Catherine G.,	)	Valerie Boettle-Ceckowski,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's finding of unfitness was not against the manifest weight of the evidence under section 1(D)(t) of the Adoption Act where respondent admitted that the minor was born with cocaine in her system; and (2) the trial court's finding that it was in the best interests of the minor to terminate respondent's parental rights was not against the manifest weight of the evidence where the minor had lived with her foster family her entire life, and her emotional, physical and special educational needs were being met; affirmed.

¶ 2 On December May 24, 2013, the trial court entered an order finding respondent unfit for the purpose of terminating her parental rights to J.G. (born April 4, 2008), and entered an order finding it was in J.G.'s best interest to terminate respondent's parents rights. Respondent appeals arguing: (1) the trial court's finding that respondent's parental rights should be terminated based on a previous

drug exposure at birth was against the manifest weight of the evidence; (2) the trial court's finding that respondent was unfit because she failed to make reasonable progress within the first nine months after the adjudication of neglect is against the manifest weight of the evidence; (3) the trial court's finding that respondent was unfit because she failed to make reasonable progress for any nine month period after the first nine month period is against the manifest weight of the evidence; (4) the State's reliance on *In re A.B., S.B., A.B., J.B. and T.B.*, 308 Ill. App. 3d 227 (1999), is overbroad and the burden of proof cannot be met in this case by admission of the service plans alone; and (5) the trial court's finding that it is in the minor's best interest that respondent's parental rights be terminated is against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 J.G. was born on April 4, 2008. On April 10, 2008, a temporary custody hearing was held. The trial court granted temporary custody of J.G. to the Department of Children and Family Services (DCFS), based on a finding of neglect. The trial court stated that the finding of neglect was based on the following stipulated facts. Respondent tested positive for cocaine and opiates nine days before J.G.'s birth, respondent admitted to using cocaine one month before J.G. was born, and J.G. was "exhibiting signs of withdrawal." Respondent had previously been diagnosed with bi-polar disorder, exhibited signs of the disorder upon admission to the hospital nine days before J.G.'s birth, and had admitted to not taking her medication. Further, there was "an ongoing concern of drug use and mental health issues." In addition, respondent was "not in a stable home and the father cannot take [J.G.]."

¶ 5 On November 13, 2008, after a hearing, the trial court found that J.G. was neglected based on respondent's admission that "at the time of the minor's birth, the meconium tested positive for

a metabolite of cocaine." The trial court ordered DCFS to prepare and submit a social investigation report and ordered respondent to cooperate with DCFS or any social service agency designated by DCFS in the preparation of a social investigation, and with regard to tasks and services.

¶ 6 On January 8, 2009, after a hearing, the trial court entered an order of ruling and disposition granting DCFS guardianship and custody of J.G. with the right to place her in an appropriate foster home. The trial court made the following findings. On November 11, 2008, J.G. was found to be neglected. Further, the trial court found respondent "unfit or unable" to care for J.G. based on the fact that at the time of J.G.'s birth her meconium tested positive for a metabolite of cocaine. The trial court ordered that J.G. be made a ward of the court and that DCFS be appointed her legal guardian. Further, the trial court ordered respondent to cooperate with any reasonable requests made by DCFS or any agency designated by DCFS with regard to tasks and services and to cooperate with any recommendations and successfully complete the following programs: drug/alcohol; psychiatric; parenting classes, and individual counseling. Respondent was also ordered to receive a complete physical exam.

¶ 7 On April 9, 2009, the first permanency hearing was held. The trial court ordered that the permanency goal was to have J.G. return home with respondent within five months.

¶ 8 On October 8, 2009, the second permanency hearing was held. The trial court found that the prior goal could not be achieved because "services are still being provided [and] need to be completed." The trial court ordered that the permanency goal was 12 months because respondent was "in need of additional services [which] will not be completed in [the five] month time frame." The trial court ordered respondent to submit to additional drug tests.

¶ 9 On April 8, 2010, the third permanency hearing was held. The trial court found that respondent had made substantial progress towards the return home of J.G.. The trial court ordered that the permanency goal was 12 months because respondent was still participating in services.

¶ 10 On October 7, 2010, the fourth permanency hearing was held. The trial court found that respondent had not made substantial progress towards the return home of J.G.. The trial court ordered that the permanency goal was 12 months because respondent was still participating in services. The trial court also ordered a report from "psychiatrist for mom and dad to verify compliance."

¶ 11 On April 14, 2011, the fifth permanency hearing was held. The trial court found that respondent had not made substantial progress towards the return home of J.G., respondent was "in [and] out of [the] hospital[, and] was not visiting as much." The trial court ordered that the permanency goal was 12 months because respondent was still in need of services. The trial court also ordered that respondents must attend every available visit.

¶ 12 On June 23, 2011, the sixth permanency hearing was held. The trial court found that respondent had not made substantial progress towards the return home of J.G.. The trial court ordered substitute care pending court determination on termination of parental rights because "[p]arents are not cooperating [with] services."

¶ 13 On December 11, 2011, the State filed a petition to terminate respondent's parental rights alleging that she was an unfit parent pursuant to subsections 1(b), 1(m)(i), 1(m)(ii), 1(m)(iii), and 1(t) of the Adoption Act (Act) (750 ILCS 50/1(b), 1(m)(i), 1(m)(ii), 1(m)(iii), 1(t) (West 2010)) in that:

"(b) [respondent] failed to maintain a reasonable degree of interest, concern or responsibility as to the minor's welfare;

(m)(i) [respondent] failed to make reasonable efforts to correct the conditions which were the basis for the removal of the minor;

(m)(ii) [respondent] failed to make reasonable progress towards the return of the minor within 9 months after an adjudication of neglected minor or abused minor under section 705 ILCS 405/2-3 or dependent minor under 705 ILCS 405/2-4;

(m)(iii) [respondent] failed to make reasonable progress toward the return of the minor during any 9 month period after the end of the initial 9 month period following the adjudication of neglected or abused minor under section 705 ILCS 405/2-3 or dependent minor under 705 ILCS 405/2-4;

(t) a finding that at birth, the child's blood, urine or meconium contained any mount of a controlled substance *** or a metabolite or a controlled substance, ***and that the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor *** after which the biological mother had the opportunity to enroll and participate in a clinically appropriate substance counseling, treatment and rehabilitation program."

¶ 14 At the hearing on the State's petition on May 21, 2013, at the State's request, the trial court admitted the trial court's prior orders into evidence, DCFS service plans and reports, and medical records from the hospital at the time of J.G.'s birth. The State presented the testimony of Noell Juola, a case manager with One Hope United who testified as follows. Juola managed the case at issue from September 2009 through May 2010. J.G. came into care after she and respondent both

tested positive for cocaine on the day of J.G.'s birth. Juola initiated a six-month service plan for respondent prior to November 2009. Respondent's tasks were to attend individual counseling to address past issues with domestic violence, cooperate with random drug screens, and achieve and maintain an alcohol and drug-free life. Juola rated respondent "unsatisfactory" for all these tasks for this six-month time period. Juola also rated respondent "unsatisfactory" regarding the visitation plan. Juola also initiated a new six-month service plan for respondent in November 2009 that was completed in May 2010.

¶ 15 On cross-examination, Juola testified as follows. Juola rated respondent "satisfactory" towards the goals of maintaining permanent housing and a legal source of income, engaging in psychiatric and mental health treatment, continuing to take her psychotropic medication as prescribed and complying with "NICASA" treatment and aftercare programs. Juola assumed that, because respondent completed treatment with "NICASA," she tested negative for drugs at that time. Juola also testified that respondent stopped individual therapy because of the provider's budgetary crises and, therefore, it was not respondent's fault. During the second six-month period respondent had some health issues but she completed her task to maintain a drug and alcohol-free lifestyle, engaging in psychiatric and mental health services, maintaining a legal source of income and permanent housing.

¶ 16 Carleen Otto, a parenting coach with One Hope United, testified on behalf of respondent as follows. She coached respondent from January 2011 through March 2011 and saw respondent and J.G. strengthen their bond during that time. Respondent played with J.G. and interacted appropriately with her. However in March, respondent was becoming inappropriate with J.G.. In March respondent stopped her parenting coaching sessions. Respondent became upset with J.G.

because she was not very verbal. Otto testified that respondent "taunted" J.G. with a sucker to try to get J.G. to speak. Otto considered the increased frustration an inappropriate interaction with J.G.. Otto learned that, in April, respondent was in the hospital and was not feeling well enough for visits. In May 2011 One Hope United determined that respondent should work on her health issues first before continuing coaching. Otto opined that respondent's health issues were so extreme that they were interfering with respondent's ability to parent.

¶ 17 Respondent testified on her own behalf as follow. Respondent was participating with DCFS services until her hospitalization in April 2011 for blood clots in her lungs. Respondent was in the hospital for about three weeks and then on bed rest for about two weeks after her discharge from the hospital. Respondent contacted her caseworker during her hospitalization about once a week and during her bed rest. In October 2011 respondent was admitted to the hospital for double pneumonia. In November 2011, one of respondent's tasks was to attend Alcoholic's Anonymous (AA) meetings. After respondent was released from the hospital, she attended four out of seven days and chaired two of the meetings each week and continued to attend. Respondent also participated in mental health services and continued to participate. During respondent's visits with J.G. from May to November 2011, J.G. always ran to her, hugged her and greeted her warmly. Respondent is bonded with J.G..

¶ 18 On cross-examination, respondent testified as follows. Respondent completed the "NICASA" drug program in November 2009. Respondent had been required to complete a drug program because J.G. was born cocaine positive. Respondent testified that she had been clean since she completed the "NICASA" program in 2009. From December to November 2011, all of her urine drops tested clean. Her visits with J.G. were unsupervised but became supervised with J.G.'s foster mother.

¶ 19 In rebuttal, the State called Melissa S., J.G.'s foster mother and maternal cousin, who testified as follows. Melissa had been J.G.'s foster mother since J.G. was five days old. Melissa supervised visits with J.G. and her parents. During the visits, the parents fed J.G. junk food, sang with her, let her play with their phone and took pictures of her.

¶ 20 During the best interests stage of the hearing, Jennifer Woods, case manager for One Hope United, testified as follows. J.G. had a strong bond with Melissa, her maternal cousin and referred to her as "mommy," they are loving and affectionate towards each other; the maternal cousin provided for J.G.'s needs, including shelter, clothing and food. J.G. was treated like a member of the family, along with the maternal cousin's two biological children who live in the home. If J.G. were removed from the maternal cousin's home, "it would be very difficult on her. She has been in this home for five years, her whole life. She knows no other home." Removal from the home would have a negative effect both emotionally and psychologically.

¶ 21 On cross-examination Woods testified as follows. She had not witnessed J.G. and respondent together but had reviewed the reports of their visits together contained in the case file. J.G. referred to respondent by her first name and not as "Mom." Woods opined that there was no "parental bond" between them. Woods defined a parental bond as one who "you seek out to address all of your needs, [and] have all your cares taken care of." J.G. feels comfortable with respondent and is not afraid of her.

¶ 22 Jane Williams, the court-appointed special advocate (CASA) for J.G. testified as follows. She had over 70 visits with J.G. for the last three years. In the early years of Williams' CASA placement she observed J.G. and respondent interact "once or twice." Respondent sang to and played with J.G.. J.G. was comfortable with respondent and was not afraid of her. J.G. referred to

respondent by her first name. Williams' observed J.G. and her foster mother interact "many times." Their interactions were "very affectionate." J.G. refers to her foster mother as "Mommy." The foster mother has four other children: a girl in her early 20's who no longer lives at home; a girl who completed her first year of college and is home for the summer; a girl in junior high school; and a boy, about 12 years old. J.G.'s relationship with these children is "very affectionate." "[J.G.] refers to them as her sister[s] and brother," considers them her family and is bonded to her foster mother. J.G.'s foster mother meets her needs. J.G. has special needs; her fine motor skills are still delayed. She had a speech deficit but after receiving services, her speech is now fine. "[J.G.] talks up a storm." J.G. is now spending more time in "regular preschool class rather than special ed" and she is registered to attend kindergarten in the upcoming school year. J.G. has an Individual Education Program (IEP) at her school and her foster mother attends the IEP meetings and helps transition her in school. Williams opined that if J.G. were removed from the foster mother's home it would have a negative affect on J.G..

¶ 23 Nathaniel G., J.G.'s father, testified as follows. When J.G. sees respondent during visits, she "run[s] over there to her and give[s] her a hug." They sing together and J.G. tells respondent about her friends in school and they play games and eat snacks together. J.G. is happy and affectionate; she hugs and kisses respondent.

¶ 24 After a hearing, on May 21, 2013, the trial court found that respondent was unfit based on her (1) failure to make reasonable progress toward the return of J.G. within nine months after an adjudication of neglected or abused minor pursuant to section 1(m)(ii) of the Act; (2) failure to make reasonable progress toward the return of J.G. during any nine month period afer the initial nine month period following the adjudication of a neglected or abused minor pursuant to section 1(m)(iii)

of the Act; and (3) a finding that at birth, J.G.'s blood, urine or meconium contained any amount of a controlled substance or a metabolite of a controlled substance, and that the biological mother of the child is the biological mother of at least one other child who was adjudicated a neglected minor, after which the biological mother had the opportunity to enroll and participate in a clinically appropriate substance counseling, treatment and rehabilitation program, pursuant to section 1(t) of the Act. The trial court also found that it was in the best interest of J.G.'s to terminate the parental rights of Respondent. Respondent filed her notice of appeal on June 20, 2013.

¶ 25 II. ANALYSIS

¶ 26 The involuntary termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (705 ILCS 405/1–1 *et seq*. (West 2010)); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). First, the State must prove by clear and convincing evidence that the parent is "unfit" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2002)); *J.L.*, 236 Ill. 2d at 337. Second, if the parent is found unfit, the trial court must determine whether, by a preponderance of the evidence, terminating the parental rights would be in the child's best interests. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. See *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. We defer to the trial court's factual findings and will not reverse the court's decision unless the findings are against the manifest weight of the evidence. See *In re C.W.*, 199 Ill. 2d 198, 211 (2002). A trial court's finding regarding the best interest of the child will not be reversed on appeal unless such findings are against the manifest weight of the evidence. *In re J.L.*, 236 Ill. 2d at 344. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the lower court's determination is "unreasonable, arbitrary, or not based on the

evidence." *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70. Because parents have superior rights against all others to raise their children, the State must prove by clear and convincing evidence at least one ground of parental unfitness under section 1(D) of the Adoption Act before the trial court may terminate parental rights. *In re G.W.*, 357 Ill. App. 3d 1058, 1059-60 (2005).

¶ 27 Respondent argues that the trial court's findings of unfitness on three grounds found by the trial court are against the manifest weight of the evidence. Proof of any one ground is sufficient to find a parent unfit. *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 29. Because we determine that the trial court's finding of unfitness was not against the manifest weight of the evidence under section 1(D)(t) of the Act (750 ILCS 50/1(D)(t) (West 2012)), we need not consider whether Respondent was also unfit under sections 1(D)(m)(ii) or 1(D)(m)(iii) (750 ILCS 50/1(D)(m)(ii), 1(D)(m)(iii) (West 2012)).

¶ 28 To prove respondent unfit under section 1(D)(t), the State was required to show that: (1) respondent previously gave birth to a child who was adjudicated neglected because she was born with drugs in her system; (2) respondent had an opportunity to enroll and participate in a clinically appropriate substance abuse counseling, treatment and rehabilitation program; and (3) the minor at issue in the instant petition was born with drugs in their blood, urine or meconium. 750 ILCS 50/1(D)(t) (West 2012); *In re M.S.*, 351 Ill. App. 3d 779, 786-87 (2004).

¶ 29 On appeal, Respondent argues only that the State failed to prove the third element of section 1(D)(t). Respondent argues that the lab report, without a witness explaining its meaning, was insufficient to prove by clear and convincing evidence that J.G. was born with an improper drug in her system.

¶ 30 Here, we determine that the State presented clear and convincing evidence that respondent was unfit pursuant to section 1(D)(t). First, without objection, the State produced temporary custody, adjudication and dispositional orders showing that J.G. was previously found neglected by respondent after she admitted using cocaine seven days prior to J.G.'s birth, and that at the time of her birth her meconium tested positive for a metabolite of cocaine. Second, respondent admitted during cross-examination that J.G. was born with cocaine in her system. This evidence was sufficient to prove by clear and convincing evidence the third element of section 1(D)(t). As a result, we cannot find that the trial court's determination of unfitness was against the manifest weight of the evidence.

¶ 31 We also note that respondent is collaterally estopped from asserting that the State failed to prove that J.G. was born with a metabolite of cocaine in her meconium. Collateral estoppel applies when a party participates in two consecutive cases arising on different causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389-90 (2001). See also, *In re J'America B.*, 346 Ill. App. 3d 1034, 1042 (2004). The adjudication of the fact or question in the first cause will be conclusive of the same question in the later suit. *Nowak*, 197 Ill. 2d at 390. The requirements for the application of the collateral estoppel doctrine are: (1) the issue decided in the prior adjudication is identical with the one presented in the suit in question; (2) there was a final judgment on the merits in the prior adjudication; and (3) the party against whom estoppel is asserted was a party, or in privy with a party, to the prior adjudication. *In re A.W.*, 231 Ill. 2d 92, 99 (2008). In this case, the dispositional order of January 8, 2009, wherein the trial court made J.G. a ward of the court, was based on a finding that J.G. was

born with a metabolite of cocaine in her meconium. Thus, the disposition order decided the identical issue respondent asserts here, and the dispositional order was a final judgment on the merits. See *In re Barion S.*, 2012 IL App (1st) 113026, ¶ 39. Thus, collateral estoppel applies in this case to bar respondent from arguing that the State failed to prove that J.G. was born with drugs in her system.

¶ 32 Next, respondent argues that the trial court's findings that she failed to make reasonable progress within the first nine months after the adjudication of neglect (section 1(D)(m)(ii)) and that she failed to make reasonable progress for any nine month period after the first nine month period after the adjudication of neglect (section 1(D)(m)(iii)) are against the manifest weight of the evidence. Parental rights may be terminated upon proof, by clear and convincing evidence, of a single ground of unfitness. *In re D.L.*, 191 Ill. 2d 1, 8 (2000). Because we have determined that the trial court's finding of unfitness was not against the manifest weight of the evidence based on section 1(D)(t), we need not review the trial court's findings that respondent was unfit based on her failure to make reasonable progress within the two time periods. See *In re Brandon A.*, 395 Ill. App. 3d 224, 238 (2009).

¶ 33 In a related argument, the State relied on the DCFS service plan reports to support the allegations of unfitness under section 1(D)(m)(ii) and 1(D)(m)(iii). Respondent argues that the State improperly relied on certain cases as support for its position that the DCFS service plan reports "alone can rise to the level of proof by clear and convincing evidence." However, we need not address this issue because we have already determined that the trial court's finding of unfitness was not against the manifest weight of the evidence under section 1(D)(t). See *In re Brandon A.*, 395 Ill. App. 3d at 238.

¶ 34 Respondent also argues that the trial court's finding that it was in J.G.'s best interests to terminate her parental rights was against the manifest weight of the evidence. Once a trial court finds a parent unfit under one of the grounds of section 1(D) of the Act, the next step in an involuntary termination proceeding requires the court to consider whether it is in the best interests of the child to terminate parental rights, pursuant to section 1–3(4.05) of the Act (705 ILCS 405/1–3(4.05) (West 2010)). At the best-interest stage of a termination proceeding, due process does not require standards as strict as at the unfitness stage. *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004). The State must prove unfitness by clear and convincing evidence, whereas it has to prove that it is in the child's best interests to terminate parental rights by only a preponderance of the evidence. *Id.* at 366. As the supreme court explained:

> "at a best-interests hearing, the parent and the child may become adversaries, as the child's interest in a loving, stable and safe home environment become more aligned with the State's interest in terminating parental rights and freeing the child for adoption. Although the parent still possesses an interest in maintaining the parent-child relationship, the force of that interest is lessened by the court's finding that the parent is unfit to raise his or her child." *Id.* at 364.

On appeal, our standard of review is whether the trial court's preponderance ruling was against the manifest weight of the evidence. *In re J.L.*, 236 Ill. 2d 329, 344 (2010).

¶ 35 In making a determination as to a child's best interests, the court is required to consider the following factors:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued * * *;

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child; [and] * * *

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2010).

¶ 36 Respondent argues that she "met" the following factors: the physical safety of the child including food, shelter and clothing; the development of the child's identity; the child's background and familial ties; the child's sense of security; and the uniqueness of every family.

¶ 37 Although there was evidence that respondent and J.G. have an affectionate relationship during their visits, respondent is collecting social security income and may have an adequate home, the record establishes that the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence. At the time of the termination proceeding, J.G. was five years old and had spent her entire life in the care of her foster mother and her children whom

J.G. considered to be her family. J.G. was doing very well in her foster home and her physical, emotional and special educational needs were being met. J.G.'s caseworker and CASA representative testified that removal from her foster home would have a negative affect on J.G.. Respondent's assertions to the contrary are unavailing and fail to recognize that at a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in having a stable and loving home life. See *D. T.*, 212 Ill. 2d at 364. Thus, based on the evidence, we conclude that the trial court's finding, that it was in J.G.'s best interests to terminate respondent's parental rights, was not against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 40 Affirmed.